

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case Nos.: <b>13-O-12493-PEM</b> (13-O-16626;
	)	14-O-01565)
<b>DARRELL NATHAN ERWIN,</b>	)	
	)	<b>DECISION AND ORDER OF INVOLUNTARY</b>
<b>Member No. 188308,</b>	)	<b>INACTIVE ENROLLMENT</b>
	)	
A Member of the State Bar.	)	

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Respondent Darrell Nathan Erwin (respondent) is charged with 10 counts of misconduct. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and if the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

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<sup>1</sup> Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar.

<sup>2</sup> If the court determines that any due process requirements is not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

## **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice law in this state on June 5, 1997, and has been a member of the State Bar of California since that time.

### **Procedural Requirements Have Been Satisfied**

The State Bar filed the NDC in this proceeding on July 15, 2014. On July 15, 2014, the State Bar also served the NDC on respondent at his membership-records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was actually delivered to respondent's membership-records address on July 17, 2014. Thereafter, on July 22, 2014, the State Bar received the return receipt for the NDC. The signature on the return receipt is illegible.

On July 15, 2014, the State Bar also emailed a copy of the NDC to respondent at his membership-records email address. That email was not returned as undeliverable.

Thereafter, the State Bar did not undertake any additional efforts to provide notice to respondent because during a phone conversation on about April 10, 2014, respondent told the assigned Deputy Trial Counsel (DTC) "that he would not request an ENEC [early neutral evaluation conference] and that he would permit the matter to proceed via default because he was no longer capable of practicing law due to [a] skin infection [he has]."

Respondent failed to file a response to the NDC. On September 16, 2014, the State Bar properly served a motion for entry of respondent's default on respondent at his membership-records address by certified mail, return receipt requested. Thereafter, the State Bar filed the motion for entry of default on September 17, 2014. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the DTC declaring why he did not take additional steps to provide notice to respondent once the

NDC was actually filed and served on respondent. (Rule 5.80.) The motion also notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The State Bar received the return receipt for the motion for entry of default, which was signed by Peter Montgomery on September 18, 2014.

Respondent did not file a response to the motion, and his default was entered on October 2, 2014. The order entering the default was properly served on respondent at his membership-records address by certified mail, return receipt requested. However, on October 30, 2014, the order was returned undelivered to the State Bar Court marked “Return to Sender [¶] Unclaimed [¶] Unable to Forward.”

In the order entering default, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),<sup>3</sup> effective three days after service of the order. Respondent has continuously been involuntarily enrolled inactive under that order since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On January 21, 2015, the State Bar properly served a petition for disbarment after default on respondent at his membership-records address by certified mail, return receipt requested. Thereafter, the State Bar filed the petition for disbarment on January 23, 2015. The State Bar reported in the petition that (1) it had not had any direct contact with respondent after his default was entered on October 2, 2014; (2) there are no other disciplinary proceedings pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments due to respondent's conduct.

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<sup>3</sup> All further statutory references are to the Business and Professions Code.

In the petition, the State Bar further reported that, after respondent's default was entered, it had the following contacts with a woman who identified herself as respondent's wife. On October 6, 2014, the woman left a voicemail message for the DTC in which she stated, inter alia, that she is respondent's wife. Later than same day, the DTC spoke to the woman on the telephone. During their phone conversation, the woman told the DTC that she is respondent's wife, that she is aware of the disciplinary proceedings against respondent, that respondent suffers from a serious parasitic skin infection, that respondent cannot handle stress, and that she has not told respondent about the filing and service of the NDC. The DTC told the woman that respondent's default had been entered four days earlier on October 2, 2014, and that respondent or counsel for respondent needed to take action to set aside the default by January 5, 2015.

On November 4, 2014, two State Bar investigators went to respondent's membership-records address, which is respondent's home, and spoke with a woman who identified herself as respondent's wife. They asked to speak with respondent. The woman went upstairs and then returned and told the investigators that respondent did not want to speak with them. The investigators told the woman that respondent had not responded to pleadings from the State Bar, and the woman replied that respondent would submit a written response by December 31, 2014.

On December 31, 2014, a woman left a voicemail message for the DTC in which she stated that she was respondent's wife, that respondent wanted to respond to the motion for default, and that she requested, on respondent's behalf, an extension until January 5, 2015, to file a motion to set aside the default. According to the DTC, he never responded to the December 31, 2014 voicemail message because he was not at work between December 31, 2014, and January 5, 2015, which was the length of the extension requested by respondent.

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 18, 2015.

## **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations (but not the charges or conclusions) in the NDC were deemed admitted and no further proof was or is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged on all 10 counts of misconduct and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

### **Case Number 13-O-12493 (Nelson Matter)**

Counts One and Two – respondent willfully violated State Bar Rules of Professional Conduct, rule 4-100(A) (failure to maintain client funds in trust account) by failing to maintain \$36,365.77 out of \$70,000 in client settlement proceeds in his client trust account (CTA). In addition, respondent willfully violated section 6106 (moral turpitude) by misappropriating, through gross negligence, \$36,365.77 out of the \$70,000 in settlement proceeds from his client Patricia Nelson for his own use and benefit between about June 2011 and August 11, 2011.

Count Three – respondent willfully violated section 6106 (moral turpitude) on about September 30, 2013, by stating in letters to three of his client's medical care providers that there were not enough settlement proceeds to pay all of their fees and liens and that his law office would be reducing its bill by about 50 percent when respondent was grossly negligent in not knowing that these statements were false.

Count Four – respondent willfully violated section 6106 (moral turpitude) on about October 17, 2013, by stating in a letter to his client Patricia Nelson that he had paid her health care providers \$9,565.38 from his CTA and that he was paying her the remaining trust funds of \$18,016.19 when respondent was grossly negligent in not knowing that these statements were false.

Count Five – respondent willfully violated section 6068, subdivision (m) (failing to communicate) by failing to respond to about 40 reasonable status inquiries made by his client Patricia Nelson.

Count Six – respondent willfully violated State Bar Rules of Professional Conduct, rule 4-100(B)(3) (failing to render appropriate accounts of client funds) by failing to account to his client, as she requested on six occasions, for \$70,000 in settlement proceeds that respondent received on behalf of the client.

Count Seven – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release a file in accordance with client’s request) by failing to promptly return his client’s file, in accordance with her three requests at and after the termination of respondent’s employment.

**Case Number 13-O-16626 (Disciplinary Investigation of Nelson Matter)**

Count eight – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a substantive response to two State Bar investigation letters regarding the Nelson matter.

**Case Number 14-O-01565 (MCLE Compliance Matter)**

Count Nine – respondent willfully violated section 6106 (moral turpitude) on about July 1, 2013, by reporting that he had fully complied with his Minimum Continuing Legal Education (MCLE) requirements for the 2010–2013 when respondent was grossly negligent in not knowing that he had failed to complete the MCLE requirements for that period.

Count Ten – respondent willfully violated section 6068, subdivision (i) by failing to provide a substantive response to two State Bar investigation letters regarding his MCLE compliance matter.

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## **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (a) properly served the NDC on respondent at his membership records address by certified mail, return receipt requested; and (b) sent a courtesy copy of the NDC to respondent at his membership-records email address;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite reasonable notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Darrell Nathan Erwin be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court further recommends that Darrell Nathan Erwin be ordered to make restitution to Patricia Nelson in the amount of \$36,365.77 plus 10 percent interest per year from August 11, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Patricia Nelson, plus interest and costs, in accordance with Business and Professions Code section

6140.5). Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Darrell Nathan Erwin, State Bar number 188308, be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: May \_\_\_, 2015.

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**PAT McELROY**  
Judge of the State Bar Court